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TENANT TIMES

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Fair Rents For Small Buildings

Permanent rent control for small buildings was the issue of the day at the 1994 Tenant Convention held this Spring. And to bring full and fair rent control to tenants in these buildings, the ballot was decided on as the route to go.

So, November's ballot should have a measure on it which will close a major loophole--ending the exemption from rent control of 2-4 unit, landlord occupied buildings. An exemption which has resulted in the unjust evictions of probably thousands of tenants and horrendous rent increases for thousands more.

Why This Issue?

About one-quarter of San Francisco's rental housing is 2-4 unit apartment buildings. Some neighborhoods, in fact, are dominated by these small buildings.

Back in 1979 when rent control became law, many compromises were reached to appease on-the-fence politicians. Among those compromises was the decision to exempt 2-4 unit, landlord occupied buildings from rent control.

For fifteen years, these rental units have enjoyed a special status under rent control: they are the only ones which can have rent control taken away. In any other building, once the tenants are covered under rent control they're covered for life. But for many years, tenants in small buildings have had to live in fear that their landlord--or a new landlord--would try to end their rent control protection.

To get these units off rent control was pretty easy since all it takes is a claim of owner occupancy. Over the years, the investors and speculators who prey all over San Francisco have learned exactly how easy this is.

Once a unit is empty in the buildings (often after an owner move-in eviction), the landlord might simply set up a paper trail to "prove" their occupancy at the building: get a phone installed, get mail sent there, have some utilities turned on (and put the light on a timer for good measure) and even drop by and visit sometimes. Or the landlord might bring in a partner and then file papers at the Recorder giving that person some paper "ownership" and then setting up the partner as the "owner" occupant.

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Anti-Monopoly Man Logo Returns!

The old Tenants Union logo has come back to life on new T-Shirts. See Page 7 for information.

Presidio Takeover Forces Government To Talk Housing

Photo by Jane Cleland

32 homeless people and housing advocates were arrested at the Presidio in May after they seized six units of vacant housing on the soon-to-be-closed military base.

The takeover resulted in Rep. Pelosi setting up negotiations to consider housing for homeless people as part of the new Presidio. It dramatically brought home the point that the conversion of California's military bases to peacetime issues should address one the most pressing peacetime needs we have: the thousands of people forced to live on the streets due to high housing costs and the lack of jobs.

The Presidio action was part of a statewide housing takeover day organized under the umbrella of the California Homeless Network. In Los Angeles and Long Beach, three homes owned by the Department of Housing and Urban Development (HUD) were also successfully seized and occupied for over a week. Negotiations on the housing are continuing in those cities, as well.

The statewide housing takeovers were orchestrated after numerous housing and homeless groups met earlier this year, fed up with federal government owning tens of thousands of vacant housing units and doing nothing to use this resource for housing for homeless people.

The frustration leading to the direct action was particularly fueled by the fact that the government actually has a law--the McKinney Act--which requires federally owned vacant housing to be turned over for homeless housing. The federal government routinely ignores this law even after numerous lawsuits have resulted in judges ordering the government to obey the law.

The McKinney Act says pretty simply that vacant federal property should be inventoried periodically and generally classified as "surplus" or "underutilized" if there are no plans for its use. It then says the housing should be offered to homeless groups unless some other federal agency has a use for the housing.

But, in fact, few agencies ever inventory their property and the amount of housing which ends up in the hands of homeless people is virtually nonexistent. Homes Not Jails, one of the main organizers of the Presidio takeover, has occupied a number of federally

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Housing Maintenance Ordinance Introduced

Landlords will be required to maintain and rent dilapidated housing under an ordinance introduced at the Board of Supervisors in May.

And–if the landlord disobeys the proposed law–the housing will be turned over to people who are homeless who will fix up the housing under "sweat equity" rental contracts. The proposed law sets strict standards for landlords to both maintain housing and place vacant units on the rental market. It was introduced by Sup. Angela Alioto.

The ordinance, written by the Tenants Union and Homes Not Jails, was modeled after a similar law in Seattle but goes a big step further.

If the landlords fail to meet a "duty to maintain" or a "duty to rent," the housing will then be turned over to a non-profit housing developer who will be directed to rehabilitate and rent the housing at permanently affordable rents for people who are homeless or are categorized under HUD standards as having very low incomes.

Further, the law sets in place the rehabilitation of the housing through the use of "sweat equity" contracts in which people who are homeless would perform the rehabilitation, maintenance, caretaker, and provide services such as child care in exchange for tenancy.

The law was immediately attacked by the Apartment Owners Association as an "infringement on the free enterprise rights of landlords," and claimed that even with people dying on the streets, the right to keep housing should be analogous to a bakery which "doesn't

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1994 Tenants Rights Handbook Now Ready!
See Pages 4-5

Next Issue: Bad Landlord Contest

Every day we hear reports of the worst landlord ever. Help save future tenants by submitting your nomination of the worst landlord. Put your horror story in writing and put their names in print–do a public service! Submit to SFTU, 558 Capp St., SF, 94110

Housing Maintenance Law Introduced

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want to sell donuts."

The ordinance is known formally as the "Housing Maintenance Ordinance" and was drafted over many months after much consultation with homeless advocates, non-profit housing developers, and tenant advocates. While Alioto introduced the legislation, Sup. Sue Bierman provided instrumental help in the drafting process and was integral to the development of the final document.

According to the 1990 US Census, there are about 7,500 housing units which landlords are holding off the rental market. It is estimated these units could house about 11,000 people (San Francisco's homeless population is somewhere around 14,000 people). The Housing Maintenance Ordinance would enable the city to take steps to begin utilizing these vacant units for housing for homeless people.

Currently, the city has limited legal ability to acquire this vacant housing. Means such as "eminent domain" require payment to the landlord of "fair market value" of any vacant housing acquired and has not been used, largely because of the cost. Utilizing the housing through the Housing Maintenance Ordinance, on the other hand, relies on the basis that the vacant building is empty in violation of the law. And since rehabilitation will be accomplished with sweat equity, the rehabilitation costs will be minimal.

The legal basis of the law rests first on the duty of property owners to maintain housing in safe and decent condition, but also creates a duty to rent the housing based on the current emergency of homelessness. It is built on the assumption that the rights of people to housing outweigh the rights of landlords to profit off of housing.

Among the provisions of the proposed law are:

Duty To Maintain Housing

The proposed law says that landlords have a legal obligation to repair units unless the cost of repair exceeds $4,000 per unit and defines a unit that would cost less than $4,000 as one which could be "feasibly be made habitable."

Duty To Rent Housing

Landlords owning units which can feasibly be made habitable have "duty to rent" the housing. The proposed law sets as evidence of a failure to meet this duty conditions such as:

•Building vacancy rates of 30-50%, depending on the size of the building.

•Failure to offer a unit for rent within seven days (unless repairs are necessary).

•Failure to comply with housing and building codes or reducing tenants' services as a method of forcing people out.

•Offering units for rent at a rate higher than prevailing rental rates for comparable units.

Licensing Fees For Vacant Buildings

The mechanics of enforcement of the ordinance will be paid largely through a new "licensing fee" imposed on owners of vacant housing. The fee is set at $250 per unit and its purpose is to offset the increased expenses which the city incurs as a result of vacant structures.

Housing Maintenance Fund

The proposed law sets up a fund to assist in the rehabilitation of low-income housing units. Money for this fund will come from available federal and state funds for the rehabilitation of housing as well as:

•Delinquent and defaulted taxes on vacant buildings.

•Civil penalties assessed on landlords violating the ordinance.

Non-Profit Receivership

Landlords who violate the ordinance would face court proceedings by the City Attorney to place the housing in the hands of a non-profit "receiver." The receiver would have a legal mandate to repair and rehabilitate the housing and to then offer the units for rent. The receivership is structured to insure that units will be offered for housing for homeless people.

Sweat Equity Rents

Once placed in receivership, the first priority for tenants must be currently homeless people who will be offered "sweat equity" rental agreements. The tenants will exchange labor and skills for housing. Sweat equity duties will include general rehabilitation and repair work, but will also include work such as child care, tenant management and building security.

Affordable Rents

Any rental agreements for which sweat equity can not be arranged will have rents set at no more than 20% of their income. Any cash paying tenants will be either homeless or have incomes below 30% of the median San Francisco income.

Permanent Affordability

Because the non-profit receivership function will eventually end (once the building is repaired and rented), the ordinance builds in provisions to assure permanent affordability. This is done first through a requirement that any public expenditures on the building will require rents to remain at 20% of the tenants' income for the next 50 years.

Permanent affordability is also built in through the rent control ordinance, which is amended to classify the buildings separately and forbidding any rent increases upon any vacancies (thus tying in the rents set during receivership).

The first stumbling block the ordinance will need to clear is the City Attorney's office. Following introduction, the bill was sent there. Much work was put into the proposed law to try and conform it with the state Ellis Act. The Ellis Act has been a nemesis for much progressive tenant and housing legislation. It generally says that landlords have the right to do what they want with their property, specifically including the right to go out of business. However, rent control laws have been able to get around the Ellis Act by specifically saying landlords can go out of business but then setting strict requirements on rents if the landlord tries to go back into business again (and has just used the Ellis Act to circumvent rent regulations).

The Housing Maintenance Ordinance includes language similar to what is in the rent ordinance and acknowledges the landlord "right" to go out of business, but says if he chooses to do that, it must be done formally and with restrictions–and not just by warehousing the building.

City Fails To Act So ParentsTake Action

Parents Write A Lead Law

Legislation to require landlords to remove lead paint hazards from housing took a major step forward in May, thanks to a determined group of tenants and parents of lead poisoned children. Seeing no action from a city committee formed to write lead paint legislation, the parents wrote their own law. And then got a city committee to adopt it as a first draft–and a first step toward giving tenants some rights in environmentally hazardous housing.

Over two years ago, the city passed the Comprehensive Lead Poisoning Prevention Act. Part of the law set up a Lead Hazard Reduction Committee and mandated that committee to come up with legislation in six months to set landlord requirements to remove lead paint from the homes of lead poisoned children. (It was also charged with the responsibility of writing a law to cover all housing within 12 months).

It took over a year for the committee to get formed and appointed by the Supervisors. Finally it began meeting in November of 1993.

In May 1994, its six month mandate was up by anyone's calculation. And it was still far away from developing any legislation. Meanwhile, poisoned children were getting sicker.

So, in May about 2 dozen tenants and parents of lead poisoned children took the law into their own hands. And wrote the law the "official" committee was taking so long pondering.

Then, at the Reduction Committee's May meeting, parents of lead poisoned children, all members of PODER (People Organizing to Demand Environmental Rights), presented the law they drafted to the Reduction Committee. In presenting the law, they testified of their frustration of having seriously ill children and their frustration that their landlords were doing nothing to clean up flaking and peeling paint and their frustrations that the city had no power to force the landlords to clean up their housing.

But they also spoke of their frustration with the Reduction Committee's inability to take action.

They then presented a 70-plus page ordinance which had been drafted with the help of people from the SF Neighborhood Legal Assistance Foundation, the Tenants Union, Consumers Union, and the Environmental Law Community Clinic (all operating under the umbrella of the San Francisco Lead Coalition).

The testimony of the parents and the presentation of a comprehensive ordinance served to shock much of the committee. Many, for the first time, saw there were actually human faces behind the legislation which was being debated. Faced with the reality that the committee had failed to meet its deadline and had a pretty complete documents in front of it, the Reduction Committee voted unanimously to send the PODER legislation to the City Attorney as its first draft.

Parents told the committee in no uncertain terms that there was no excuse for taking so long in writing the legislation, citing that other cities have had such laws for over two decades and San Francisco was not treading new ground. The document in front of the committee members brought this point home, and when the committee resumed its deliberations it decided it would be more efficient to adopt the document

in front of it rather than trying to spend many more months replicating it.

The committee then set an accelerated schedule of subcommittee meetings in the hope of meeting PODER's other demand that an ordinance be forwarded to the Board of Supervisors by July.

The legislation itself was based largely on existing laws and lead abatement techniques in place around the country, mainly federal HUD regulations for public housing and Massachusetts legislation for private housing. Both the HUD and Massachusetts standards have been in place for years and been modified and adapted as more has become known about lead poisoning.

The proposed legislation designates positions of "super-inspectors" within the Department of Public Health. These inspectors will be empowered to enforce any part of the San Francisco Housing or Health Codes. Lead paint in homes with children under six is defined as a "nuisance" in some cases and lead paint on flaking, peeling or child accessible surfaces becomes a Housing Code violation in homes where children under six live.

Further, criminal penalties are set for violation of lead related housing codes and the ordinance builds in an accelerated abatement process for lead violations.

For homes where children have already been poisoned, the law prohibits any rent passthroughs for the costs of cleanup and mandates at least a 50 percent rent reduction for tenants whose landlords have not cleaned up the lead pursuant to city order. Increased penalties for discrimination or retaliation against tenants with children is also built in, as are relocation benefits for tenants who must temporarily vacate while the cleanup is done.

The PODER draft adopted by the committee has now been sent to the City Attorney for further drafting. A tenant-landlord subcommittee was charged with addressing further issues, such as preventive lead abatement work in homes where no poisoning has occurred. The committee is likely to have some draft back from the City Attorney soon and very likely will have legislation ready by this Summer.

Initiative Increases Rent Control on 2-4 Unit Housing

Protection For Small Buildings

Continued From Page One

Once the landlord has staked a claim to occupancy, they must simply wait six months. Then, they can raise the rents by any amount they choose. Or evict the tenants for any reason whatsoever.

Since rent control is the nemesis of most San Francisco landlords, the ability to actually remove buildings from rent control coverage has caught on like wildfire. Lately the speculators have even been branching off into new strategies which encompass buildings larger than 4 units and the 5-8 unit buildings have become a target for "subdivisions" and apartment "mergers." The most common technique here is to combine adjoining apartments into one apartment and magically turn a 6-8 unit building with permanent rent control into a 3-4 unit building which can lose its rent control.

Big Rewards For Landlords

These schemes may take more work than fixing a tenant's broken toilet, but the payoff is so much higher for the landlord.

First, there's the obvious increase in rents. A 4 unit building with 4 households paying rent controlled rents might mean about $2,500 a month in rents for the landlord. A 4 unit building without rent control, on the other hand, is going to mean at least $4,000 a month in rental income. But that's just the frosting.

The real money is the building's equity (or resale value for simplicity). Depending on the neighborhood, a 4 unit building with 4 rent-controlled units might be worth about $300,000. But, the same building with four market rents will go sell for at least another $100,000.

That's what makes these schemes worthwhile. The investor will buy a rent controlled building, stake his claim to occupancy and then raise the rents as soon as its legal. Rather than just enjoying the higher rents and being satisfied with that, however, he'll turn around and put the building back on the market, asking for one or two hundred thousand dollars more than what he paid for it. Assume it takes about a year to do all these maneuvers, the profit per building is well over $100,000.

The Loss of Affordable Housing

In each of these buildings, the lives of people are severely disrupted. Tenants of 20 or more years are forced to move or tenants end up paying 50% or more of their income for their housing.

But what's even worse is the long term impact on everyone. San Francisco is sorely lacking affordable housing units. As long as housing remains under rent control, the units remain affordable. But, once the rent control is removed for any reason, the apartment jumps up to market rates and even though rent control may kick back in some day, the apartment will never be truly affordable again.

Every time a landlord gets to raise rents to the market rate, the pool of affordable rental units drops. It then becomes even more difficult for people to find housing they can afford. This is how people end up living on the streets or why so many have to move from San Francisco.

And for the neighborhoods as a unit, the conversion of rent-controlled apartments to market-rent apartments will mean a slow but steady change in the community and character of the area.

As buildings are removed from rent control, real estate values increase in those buildings and then through a domino effect begin increasing throughout the area. Long-term tenants are forced to move out of their homes, which means that the very people who created a neighborhood now must leave. The new tenants in the now-gentrifying neighborhood are often younger, always richer, usually less tolerant and less diverse. They're also more transitory and often without children. They lack the commitment to a neighborhood community the former tenants had and things begin looking more and more like the suburbs--stale, white, and wealthy.

By Ted Gullicksen

Many Ideas At Convention

Close to 200 people showed up for the Tenant Convention this Spring, brainstorming various proposals to change laws and expand our rights to decent and affordable housing.

Participants first gathered in workshops around Housing Conditions, Unfair Evictions and High Rents. Each workshop was charged with formulating one or two proposals to bring back to the larger group. After lunch (provided by Food Not Bombs), the convention re-gathered and debated about eight proposals, before deciding on bringing rent control to 2-4 unit buildings which are owner occupied.

While issues of unjust evictions in small buildings proved the most dominant issue, many other ideas and proposals were raised as well. In fact, the Convention provided a "wish list" which politicians might wisely use as they develop their campaign platforms in this city.

Some of the main proposals which came out of the Convention included.

Ending Capital Improvement Increases

This issue was a close second. In many larger apartment buildings, landlords have been routinely utilizing the provision in the rent law for capital improvements to hike tenants' rents. In Park Merced (owned by Leona Helmsley), for example, tenants had just received a hefty rent increase to pay for new windows and this had come on top of previous capital improvement increases. Tired of paying higher rents to improve Helmsley's property, Park Merced vigilantly fought their rent increase at the Rent Board. While succeeding in cutting the proposed increase by one-half, the Park Merced tenants fully realized the law needed reform.

Tenants from Park Merced, Stonestown and other buildings advocated strongly for an initiative to completely end capital improvement rent increases. Some variations of the proposal were to cut the allowed increase by 50% or more and/or to end the 10% interest a landlord receives above the cost of the repairs.

Three Strikes & Landlord's Out

The workshop on Housing Conditions discussed at length how landlords could be forced to make repairs. Various ideas were tossed around and each one discarded as people realized slumlords need a good swift kick and moderate reforms will do nothing. So, mandatory jail terms for landlords with repeated housing code violations was settled on. While people enjoyed envisioning landlords in jail, saner voices who argued that we shouldn't be advocating jails for anyone prevailed.

No More Lawyers!

Rent Board hearings are supposed to be less formal than court but, unlike Small Claims court, lawyers are allowed. The problem is that landlords can afford lawyers and tenants can't. Effectively, this means that landlords can have lawyers but tenants can't. Tenants thus face an uphill battle when attorneys are in their face raising legal objections, harassing them and intimidating the Hearing Officer. Tenants thus lose far too many cases they should easily win. The proposal to ban landlords from Rent Board hearings won a solid round of applause, but people felt it wasn't an important enough issue to take to the ballot.

Specified Awards At Hearings

This was another Rent Board proposal. Tenants can petition the Rent Board for a rent reduction (decrease in services) but the process can be burdensome for tenants. Besides proving that there's been no heat, for example, tenants must also specify why this was particularly harmful to them and how it translates into dollars and cents. If the Hearing Officer finds for the tenant, she can award any amount she wants. Some other rent control laws specify the awards for common complaints. For example, 50% rent reduction for no heat, 20% for loss of parking, etc. This proposal also included some side reforms to make the Rent Board Hearing process smoother, including empowering Hearing Officers to inspect the housing of tenants who were filing petitions because of housing conditions.

No Repairs? No Rent Increase.

This idea was to place the burden of proof on landlords that their rental housing met San Francisco Housing Codes before any rent increase could be granted. It would have required landlords to obtain a certificate that the apartment was free of Housing Code violations before any rent increase could be asked for. People felt this was too weak, and then developed the idea of "three strikes and you're out for landlords".

The Case Of A Serial Evictor

While the removal of small buildings from rent control has grown into a city wide problem, there's at least one landlord who's made a career out of it.

The landlord–Susanna Shaw–has become known as a "serial evictor" due to her buying up small buildings, moving into them and raising rents. One after another.

She has a real basic M.O.: she'll buy a small building, "live" in it for six months, and then raise the rents by 200-300%. She usually raises the rents six months to the day she moved in (the law says she must live there for six months before the building's off of rent control). Then she'll move on and do the same at a new building.

In five years, Shaw has removed four buildings from rent control. Her situation is now the subject of a rent board hearing and the Tenants Union has requested the Rent Board to refer her to the District Attorney for investigation. Hopefully the Rent Board will stop her before she does more harm, but so far the Board has let her run wild.

No one knows for sure how long she's been doing this. Earlier this year, though, her greed may have gotten the better of her. One of her tenants came into the Tenants Union with the tale of a landlord who bought a six unit building and then got a Bureau of Building Inspection permit to build a dividing wall through the middle.

This gave her two 3-unit buildings, she claimed. And she promptly moved into one of these "3-unit" buildings. The tenants in that side complained to the Rent Board but, unbelievably, the Board ruled that her action did make two 3-unit buildings.

This ruling came despite a report by a BBI inspector that "based on (an) inspection, I wish to confirm that the building is a single structure containing six units. It is also indicated as such in the records of the Housing Inspection Division." But, Shaw had filed for her work permits stating that he construction was for a "former party wall building - now separated into two 3-unit buildings." She also took out insurance on two different units and re-financed the building describing it as two separate units. The paper trail she created was apparently enough to convince the Rent Board there were actually two buildings, despite the testimony of the BBI inspector.

But, the structural issues aside, one might think the Rent Board would still look askance at this obvious attempt to evade the Rent Control law. And the Hearing Officer, Dave Wharton, ruled that Shaw could exempt the building from rent control ""even if the landlord's motivations were to solely exempt the property from the Rent Ordinance and/or to retaliate against the tenants." He declared the 3-unit side of the building exempt from rent control.

Not content with this victory, Shaw kept pressing on. Less than a year later, she decided she wanted to move into the other side of the building. She moved in and six months later gave the tenants a rent increase–a 500% rent increase in one case. The tenant came into the Tenants Union and the blatancy of this move caused the TU to review its files for more information on Susanna Shaw.

What was found–just in Tenants Union files–was a history of Shaw doing similar moves at the rate of about once a year.

The first case began in 1989. Then Shaw attempted to evict a tenant of a 4 unit building through an "owner move-in" eviction. The tenant fought the case and eventually prevailed. But, undeterred, Shaw simply waited for a vacancy to arise in the building. She moved in and the building was soon off of rent control.

In 1990, she tried the same trick at another of her properties in Noe Valley. She tried to move into the building again through an "owner move-in" eviction. And again the tenant fought back. Apparently, Shaw couldn't wait for a vacancy to occur and so paid the tenant over $14,000 to move out. Shaw moved in and soon the building was off rent control.

In 1992, she bought the six unit building and since then has been subdividing it, moving from one side to the other, and successfully removed one side from rent control. The tenants of the other side of the building are currently contesting her claim that that side, too, is exempt from rent control.

Now it's up to the Rent Board. Tenant advocates think she belongs in jail. We'll see if the Rent Board even thinks she's done anything wrong.

The 1994 Edition of the Tenants Rights Handook will be out in June!

On these pages are some sample sections from the new edition. This edition is the most complete update we've done since we first started printing the Handbook in 1972.

There are about 150 pages packed full of valuable information on virtually all you need to know to survive as a tenant in San Francisco.

Among the highlights of this edition are:

•A thorough Index and Table of Contents which will let you find the information you need quickly and easily.

•"How-To" sections which let you know how to apply the law in the real world.

•Live-Work tenant rights.

•Copies of all relevant laws.

•The most up-to-date information on all your rights as compiled by tenant attorneys and advocates who have decades of experience fighting for your rights–and know how the law works.

The Handbook is free with any new or renewal membership. Call the SFTU at 282-6622 for more info.

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Letter Writing & Sample Letters

Security Deposit

This is a sample letter to a landlord for when you are having trouble getting your security deposit back. In this letter, the facts of the case are concisely spelled out and documentation of your case is enclosed. This demonstrates to the landlord that you are prepared for court, if necessary. Also, the Security Deposit Law is cited and quoted freely, as this particular law is quite clear as to when a landlord must return a deposit by, what can be deducted from it, and what the penalties are for his not complying.

January 1, 1990
558 Capp St.
San Francisco, CA 9411

Gunter Kaussen
350 Turk Street
San Francisco, CA 94102

Re: The return of my security deposit

Dear Landlord:

I am writing to you to request that you return my security deposit, in it's entirety, pursuant to the terms of both our rental agreement (lease), and California Civil Code §1950.5

As you are responsible to know, Civil Code §1950.5 requires that you return my deposit in full within 14 days of the day that I vacate the apartment (house, flat, studio, unit etc); or furnish me with an itemized list of damage supposedly caused by me, along with copies of receipts for the expenses of repairing such damage.

As of today, I have not received either my full deposit nor an accounting of why I haven't received it.

As you know, I requested that you meet me at the apartment on the day that I vacated it for the purpose of inspecting it and working out a resolution to any possible problems regarding my deposit. You chose not to be present on that occasion. Because of your absence I felt it necessary to document the excellent condition in which I left the apartment. Please find enclosed copies of the photographs that I took on that day as well as copies of photographs that I took on the day that I moved in. (I have also included the checklist that I made on the day that I moved in.) As is obvious, the apartment was in better condition when I moved out that when I moved in. The law only requires that I leave the apartment in the condition that I found it less "ordinary wear and tear". Given the fact that I lived in the apartment for 4 years, I would be allowed considerable "ordinary wear and tear". Fortunately for you, I (my family, my roommates, we etc.) were very gentle on the apartment. Also enclosed are copies of the statements of the persons who witnessed the condition in which I left the apartment.

As you are undoubtedly aware, Civil Code §1950.5 also provides for penalties of up to $200.00 for "bad faith retention" of a security deposit. Because of your unwillingness to return my deposit within the period provided by law, I will have made a prima facie case of "bad faith" and therefore expect to be awarded these punitive damages as well as interest at the rate of 2% per month (24% per year)

In the light of the above, if you take your time in returning my deposit, I can take solace in knowing that regular bank interest rates are dropping, so the 24% interest looks pretty good. I am not worried about the security of my money given the nature of your real estate holdings. Perhaps I'll amuse potential buyers and mortgagees by filing a lis pendance on the property. Anyway, enough dreaming for now, its time to start drawing up a lawsuit with your name featured prominently in the space reserved for "Defendant".

In the light of your almost unlimited liability, I look forward to continuing to do business with you.

Very sincerely,
Joe Hill

Understanding Renting

Before You Move In

When you buy an automobile you have every right to expect that there will be an engine under the hood capable of making the car run. You also take for granted that it will be equipped with decent brakes, proper lights, seats, a steering wheel and other such obvious characteristics. Furthermore, no one would feel strange about using their warranty if something later went wrong. In California, and most other states, a similar idea applies to the place you rent. As the California Supreme Court unanimously stated:

> The modern urban tenant is in the same position as any other normal consumer of goods. Through a residential lease, a tenant seeks to purchase 'housing' from his landlord for a specified period of time.... A tenant may reasonably expect that the product he is purchasing is fit for the purpose for which it is obtained, that is, a living unit....The tenant may legitimately expect that the premises will be fit for such habitation for the duration of the term of the lease. *Green v. Superior Court* (1974).

This is a simplified definition of an important tenant right; the legal term for this is the "implied warranty of habitability." In other words, as a renter you have every right to expect the home you rent will be safe, decent and sanitary. You, as a renter, are a "customer" in the housing market from which your landlord, the "seller" of housing, is making a profit and maybe planning to use your money to buy more housing to sell!

Therefore, you have the legal right to expect your home to possess at least the following minimum characteristics:

- Effective weatherproofing and weather protection...including unbroken windows and doors;
- Plumbing or gas facilities...in good working order;
- A water supply...capable of producing...hot and cold running water...furnished to appropriate fixtures, and connected to a sewage disposal system;
- Heating facilities...maintained in good working order;
- Electrical lighting, wiring and equipment...maintained in good working order;
- Buildings, grounds, appurtenances and all areas under control of the landlord at the time of the lease or rental agreement, in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents or vermin;
- An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair...with the landlord providing serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control;
- Floors, stairways and railings maintained in good repair. (Excerpts from California Civil Code §1941.1)

Rent Increases Not Requiring Rent Board Approval

"Banking" Past Annual Rent Increases

Another type of rent increase that does not require prior Rent Board approval is "banking." A landlord may "bank" the annual rent increases that for some reason were not imposed in prior years (going back as far as April 1982), and then impose them in a later year. Thus, properly "banked" rent increases may be given in addition to the current annual rent increase without obtaining rent board approval. **However**, the "banked" increase may only be imposed on the tenant's anniversary date, at the same time as the current guideline increase.

The following are the allowed annual increase limitations from April 1982 to date:

April 1982 - February 1984	7%
March 1984 - December 7, 1992	4%
December 8, 1992 - February 1993	1.6%
March 1993 - February 1994	1.9%
March 1994 - February 1995	1.3%

Example: Dick Stuart has resided in a residential rental unit covered by the San Francisco Rent Ordinance since 5/1/82. His landlord has not increased Dick's rent since he moved in. He pays $500 per month (his base rent). On 4/1/94 Dick receives a notice that his rent will be increased 46.2% effective 5/1/94 to $731.00 ($231.00/mo.). This increase includes the annual increase of 1.3%, plus 44.9% banked increases (5/83-7%, 5/84-4%, 5/85-4%, 5/86-4%, 5/87-4%, 5/88-4%, 5/89-4%, 5/90-4%, 5/91-4%, 5/92-4%, 5/93-1.9%). Dick's new lawful base rent effective 5/1/94 is $731.00. The landlord cannot raise the rent again until 5/1/95 and has no further banked rent increases to impose. This example demonstrates how outrageous it is that when statutes of limitations were introduced in 1993, banked rent increases remained without any statute of limitations.

The banked amount is not compounded, i.e., the landlord can not impose the increase on each year's banked rent after adding in the annual increase. The previous (old) base rent is used to compute the banked amounts. (Rent Board Rule §4.12 (a))

Rent Board Rules also require that *"In order to impose an accumulated rent increase (i.e. banked) the landlord shall: (1) inform the tenant on or before the date upon which the landlord gives the tenant legal notice, which portion of the rent increase reflects the banked amount, and (2) the dates upon which said banked amount is based; provided, however, that failure to include such information shall not render the increase null and void."* (Rule §4.12 (b)).

Annual Rent Board Fee

Landlords are currently charged an annual fee (currently $10) by the City for each residential rental unit ($5 for Residential Hotel Rooms), which is used to completely finance the operations of the Rent Board. Landlords are required to pay this fee but can turn around and "*...seek recovery from the tenant...*". If the tenant fails to "*...remit the requested sum within sixty days...*" then the **only** action the landlord could take would be to deduct the amount of the fee from the next interest payment owed on the tenant's security deposit.

The landlord cannot tack this fee on to the rent, nor can the landlord evict the tenant for failing to pay the fee. After considerable controversy and opposition from the real estate industry the fee was passed by the Board of Supervisors for fiscal 89-90 and 90-91. In future years there may be changes. (San Francisco Administrative Code §37A.6) See *Security Deposits* chapter.

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No Heat?!?!!

San Francisco can get cold–if your landlord is neglecting your heating system it's not only inconsiderate, it's also against the law. If you are suffering from no (or inadequate) heat, then your landlord is violating the San Francisco Housing Code as well as your warranty of habitability.

Landlords who fail to provide heat can be sued, fined by the city, or face tenant actions such as rent withholding or repair & deduct.

What The Law Says

According to §707A of the San Francisco Housing Code, landlords must provide heat capable of maintaining a room temperature of 68 degrees (at a point three feet above the floor) This is based on an outside temperature of 35 degrees, so there is no excuse for heat less than 68 degrees when it's 40 or 45 degrees out. This level of heat must be provided for at least thirteen hours — specifically from 5:00 AM to 11:00 AM and 3:00 PM to 10:00 PM.

What You Should Do

1. Notify Your Landlord. With something as necessary as heat, you probably want to tell him right away over the phone or in person. *Follow it up with a letter & keep a copy.* Tell him what the law is and if the problem isn't fixed you will call the Bureau of Building Inspection and have him cited for breaking the law.
2. Contact the Bureau of Building Inspection. (See *Resources* section). You should request an inspection. It usually works better if you contact them in person and submit a written complaint. Be persistent and try to talk to the actual inspector.
3. If you are covered under rent control, petition the Rent Board to decrease your rent. (See "Decrease in Services Petition" in the *Using The Control Rent Law* chapter of the Handbook.)
4. You also have rights to "repair & deduct" or withhold rent. You should talk to a Tenants Union counselor or an attorney before you exercise these rights.
5. Talk to an attorney about bringing a lawsuit against your landlord if the problem persists and he fails to do anything about it.

Penalties Against Landlords Who Break The Law

Section 306 of the Housing Code says that landlords can be fined between $500-$1,000 and/or imprisoned for up to six months. Not providing heat is a crime. Let your landlord know what the penalty is, but be prepared to take other actions to assert your rights, as the City is reluctant to prosecute landlords.

Lead Paint

Lead paint is common in most of San Francisco's homes — most housing built before 1960 has it and 75 percent of the city's housing was built before then (San Francisco, in fact, has the ninth oldest housing stock in the country). Since the late '60s, East Coast cities have been dealing with this problem, but only recently has San Francisco admitted to a problem and begun taking action. On the East Coast, lead paint provisions are routinely built into city and state housing codes and tenants have numerous remedies to force a landlord to remove hazardous paint. That is not yet the case here, although steps are being taken in that direction and tenants are developing some solid remedies.

32 Arrested As Six Houses Seized

Affordable Housing Demanded at Presidio

Continued From Page One

owned buildings in the past year and is routinely told that the property holds some type of special exemption from the McKinney. The experience of Homes Not Jails is similar to other homeless and housing groups who have tried to see the McKinney Act implemented.

From such experiences, Bay Area groups joined together earlier this year to form a coalition to participate in the statewide housing takeover. Rather than trying to organize housing takeovers throughout the Bay Area, the groups decided to join with Homes Not Jails in a regional takeover.

Included in the coalition were homeless people from Marin, Oakland, Sonoma County, Berkeley, and San Mateo. People willing to risk arrest as part of the housing takeovers were identified and non-violence and legal trainings were set up. Others organized the support rally and caravan to the sites while others formed a negotiation team to initiate discussions with the federal government on the seized property.

The Action

Early on May 2, the squatters secretly seized the six housing units at the Presidio and hung onto them throughout the day until later in the afternoon when a 4:00 rally began and a team of negotiators headed to the Federal Building to announce the takeover to government officials.

Following music by Strawman, a poem by Jack Hirschman and a call to action by Dorothy King (of Dignity Housing West, an Oakland group which years previously had successfully pressured (through housing takeovers) HUD to turn over vacant housing to a non-profit housing group), the rally formed a caravan and close to 200 people hopped on a bus, got in cars or rode their bicycles out to the Presidio.

Organizers had attempted to keep the takeover sites secret and while skeptical in the end that this had been successful, the takeovers did in fact catch the Sixth Army by surprise. The caravan pulled into the Presidio and up to the seized housing as squatters hung banners with sentiments such as "we will not sit passively while housing remains vacant."

For the next few hours, the military police converged on the scene and forcefully pushed the crowd aside, forcing many to retreat onto a bus. Simultaneously, negotiators were at the Federal Building attempting to stave off evictions until the government agreed to talk "seriously" about following the McKinney Act. Finding no help from HUD Regional Director Art Agnos, the negotiators moved onto Rep. Pelosi's office. While Pelosi's office was unable to put a halt on the evictions and arrests, District Director Michael Yaki did agree to set up negotiations with various federal agencies.

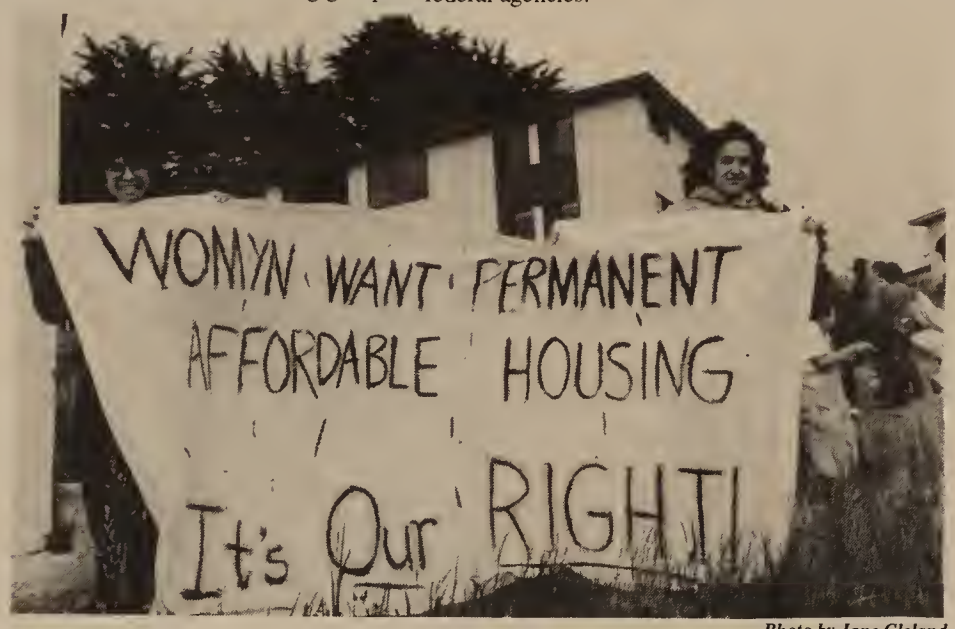

Photo by Jane Cleland

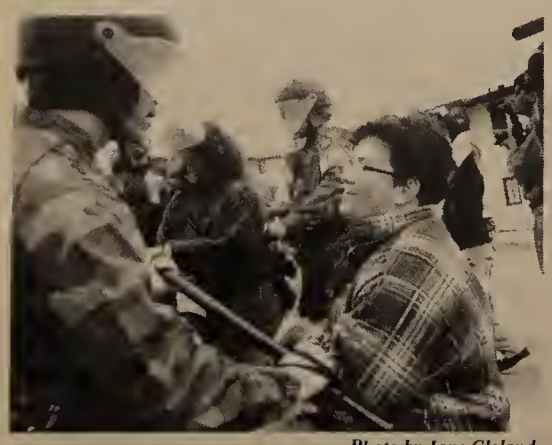

Photo by Jane Cleland

At the Presidio, once the military police had forced the crowd away from the houses, they moved in to evict the squatters. The MPs came in through the barricaded doors in full force, tossing the occupiers onto the floor. Two of the squatters were injured, one of whom the MPs took to the hospital. All were cited for trespassing and eventually released.

The Negotiations

The housing seized at the Presidio was mostly within the Wherry Housing complex, a housing development for enlisted families off of Lincoln Ave. The Wherry Housing area encompasses about 600 housing units (there are over 1,000 units on the entire base).

Under preliminary plans, the Wherry Housing will be demolished over the next few years. Currently, it is steadily being vacated and about one-third to one-half has been sitting vacant for some time.

The negotiators had gone to the Federal Building with some specific and simple demands. First among these was the demand to sit down and negotiate the future of the Presidio housing units.

If negotiations could begin, the organizers then wanted to press its specific demands. Among these were:

•No demolition of housing on the Presidio while people sleep on the streets.

•Transfer of housing slated for demolition to homeless people for $1, as an alternative to demolition.

•Provision of "interim use permits" for homeless people and groups to use vacant housing as the Presidio converts to a National Park.

The first demand was partially successful, resulting in the setting up of future negotiations (even if arrests would not be stopped).

On the next day, a delegation from the coalition which organized the takeover met with Michael Yaki in Rep. Pelosi's office. Yaki agreed to convene a meeting with representatives from Department of Interior (slated to take over management of the Presidio in October) and HUD to review a proposal from Homes Not Jails for use of Presidio Housing. Homes Not Jails agreed not to re-occupy the Presidio housing if this meeting took place within a reasonable time.

The Squatters' Proposal

At this point, the federal government is reviewing the Homes Not Jails concept paper for use of the housing.

Arguing that a new Presidio including truly affordable housing scattered throughout it would be a model for military base conversions nationwide and that such housing would be true to the principle of a multi-use national park, Homes Not Jails made two proposals:

Interim Use of Housing

It is anticipated that the closure and conversion of the Presidio will take many years. During that time, buildings will be vacated and sit there unused. Under the McKinney Act as it applies to military base closures, there are provisions for homeless people obtaining "interim use permits" for housing which may eventually be used for something but for now is sitting vacant.

Homes Not Jails proposed simply that all housing be turned over to homeless people via interim use permits as it becomes vacant. The new tenants would live in the housing mainly through sweat equity contracts and provide maintenance, repair and security of the housing (which would otherwise be deteriorating).

Permanent Housing

Homes Not Jails asked for one-third of the housing units at the Presidio to be set aside for permanent housing for homeless people. The proposal calls for the housing to be scattered throughout the Presidio so it can be a model for integrated affordable housing within a community. Because over 1,000 housing units at the Presidio are 3-bedroom or larger, 75 percent of the housing was requested for family housing. The rest was requested for shared housing for single people.

The housing would be paid for through project based Section 8 certificates, although some would be reserved for sweat equity housing. Sweat equity tenants would not only provide maintenance and repair services but would also operate a child care center open to any tenants on the Presidio.

Photo by Jane Cleland

Homeless advocates are watching the upcoming negotiations over the Presidio housing closely. Generally, to date, homeless groups have been largely shut out of the base closure process and have had to sit on the sidelines as deals are made with Hollywood for sound stages (on Treasure Island) or for private developers (Hamilton Air Force Base).

Besides the 1,300 housing units at the Presidio, there are another 1,900 at Treasure Island, 1,500 at Alameda Naval Air Station, and over 1,500 at Hamilton Air Force Base. It is expected that homeless groups will continue holding a militant and uncompromising stand on the conversion of military housing to peacetime housing for homeless people.

By Ted Gullicksen

McKinney Act Requires Vacant Federal Housing Be Given To Homeless

What Is The McKinney Act?

In 1987, the Stewart B. McKinney Homeless Assistance Act was passed by Congress and signed into law. Title V of this law stipulates that all "surplus," "excess," "under-utilized," and "unutilized" federal property be used for any activity to "assist the homeless." It says that homeless uses must take precedence over any other use.

The law enables vacant housing and other buildings to be provided to homeless people either through deeds or leases. The law sets a process for the transfer of the property to homeless use. It says each federal "landholding agency" must report to the Department of Housing and Urban Development (HUD) any properties which are not being used and whether they are surplus, excess, un-utilized or under-utilized. Un-utilized and under-utilized property includes buildings which are vacant, but not classified as permanently unneeded. Surplus or excess buildings are those the agency determines it will never need. HUD then determines its "suitability" for homeless use and publishes available properties in the Federal register.

Homeless people or groups can then apply for deeds or leases. For un-utilized and under-utilized property, "interim use permits" can also be used.

When military base closures began, amendments to the McKinney Act clarified that the law applies to base closures.

How It Really Works

Federal agencies have taken the most narrow interpretation of the McKinney Act since the law was passed and usually the McKinney process stalls right at the beginning. **Few federal agencies even make reports to HUD** or provide only incomplete reports.

This is especially true when it comes to the classification of un-utilized and under-utilizd property. The federal agencies tend to ignore these classifications andif they report anythingthey report only property which is dramatically surplus, typically some out-of-way vacant lot or property contaminated with toxic wastes. **The one listing available in San Francisco, for example, is a plot of land in a "landslide area."**

Within the first year of the McKinney Act, the federal government was sued by the National Law Center on Homelessness & Poverty (NLCHP). **In 1988, a federal judge in Washington, DC ruled that the government was violating this law and issued a nationwide injunction for the government to begin implementing the law. In 1989 and twice in 1991, similar rulings were made in federal courts.In 1993, The courts again ruled that the federal government must begin following the McKinney Act,** saying: "HUD, and not the land-holding agency, is to make all suitability determinations" about vacant property. The court again told the federal government to follow the law and ordered it to take action to make the law more accessible.

Still, though, homeless individuals and groups continue to find vacant federally owned property which federal agencies claim they do not have to list with HUD, even though the property clearly meets McKinney Act criteria.

How It Should Work At The Presidio

This base was set for closure as part of the 1989 Base Closure Act. Since at least then, the number of vacant buildings and vacant housing units has grown steadily.

However, none of this property has been listed with HUD. The Department of Defense claims that it doesn't have to because of legislation preceding the McKinney Act saying the Presidio will be turned over to the Interior Department following Army use.

Once again, the reporting agency is making a determination (rather than HUD) over the applicability of the McKinney Act. The logic behind the Army's argument is that the legislation provides for another federal need for the property, and thus the property can not be deemed surplus or excess.

Even accepting this logic, this does not explain why the vacant property has not been listed with HUD as un-utilized or under-utilized and available for homeless use until such time as the Department of Interior actually gains possession of the property.

But the logic is dubious. The property is slated for demolitioneven under draft plans for Department of Interior use. This indicates it is surplus and excess property now, and will be when the Department of Interior eventually gets it.

Further, there are 36 acres in the Presidio not covered under the Burton Bill. This area contains a number of vacant housing units. In this area, there is no reason why the property has not been classified as surplus, excess, un-utilized, or under-utilized.

Further still, there are vacant buildings on the Presidio which have been long-vacant and should have been classified as surplus, excess, un-utilized, or under-utilized years agowell before any plans for Department of Interior use were in the law.

As usual when it comes to McKinney, the law simply isn't being followed, despite four court cases ordering the federal government to obey the law.

Costa Bill To Pre-empt Vacancy Control Back

The annual Costa Bill is back! This is the state bill filed each year by Assemblyman Jim Costa (D-Fresno) which seeks to ban vacancy control as part of any rent control law. The bill would prevent San Francisco from ever including rent control on vacant apartments in the current rent control. The bill, as written, also has provisions to outlaw rent control coverage of single family homes and all new construction. While San Francisco's rent law currently exempts new construction, it provides coverage for the approximately 12,000 single family homes leased to renters. These single family homes would lose their rent control under the Costa Bill.

The Costa Bill has been a major tenant battle in Sacramento for many years. For years, tenants have been able to stop it largely through the assistance of former Senator Pro Tem David Roberti. However, Roberti is no longer President and can no longer bear the same influence on the legislation. His replacement, Sen. Bill Lockyer, is against the Costa Bill but it remains to be seen how strong or effective his opposition will be. The landlord forces are also putting an extra emphasis on getting the legislation passed this year since they anticipate the defeat of Gov. Wilson and anticipate a new Democrat will not support the Costa legislation.

The Costa Bill appeared on the scene in a particularly sleazy way this year. Tenant advocates were anticipating the bill and mystified about its absence on the scene. But, the landlords pulled a trick to amend a previously-introduced bill which had already cleared various committees and was in mid-process on its way to approval.

In March, though, Costa took AB 1320, a bill submitted by Assemblyman Bernie Richter calling for a study of vacancy control, and amended the language wholesale. He submitted his name as sponsors, and voila, there was the Costa Bill "parked" in front of the Judiciary Committee before anyone realized what was happening.

But the strategy may have backfired a bit. The Chair of the Judiciary Committee is Sen. Roberti. When the bill appeared before Roberti's committee it was just prior to his re-call election. Apparently, the landlords gambled on Roberti losing his re-call election (which would then have given the bill clear sailing out of Judiciary). They also hoped the bill's sudden appearance before Roberti would pump more landlord money into the re-call Roberti campaign (which had been started by anti-gun control groups).

Instead, though, Sen. Roberti won his re-call by a landslide. Still, though, the Costa Bill will meander through. At this point, it's anticipated that the Judiciary Committee will hear the bill in late June. Tenant advocates have met with the new Senate President Bill Lockyer, who was hopeful the bill could be stopped in the Judiciary Committee.

The 1994 Tenants Rights Handbook Is Now Available!

Our handbook has been printed since 1972 and this year's edition is a complete re-write of the 1991 Edition. It's by far the best edition we've ever done. Some of the improvements include a much more thorough Index and Table of Contents, which should make it much easier for you to find the information you're looking for.

The Handbook comes free with each membership or renewal. If you would like to join or renew (you may renew in advance and we'll extend your membership from the otiginal expiration date) you should fill in the coupon below and mail it to the Tenants Union with your check. Or you can come to our office and join in person.

For more information about the Handbook and samples of some sections, see Pages 4 and 5.

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Landlords Seek Passthrough of Tax Costs

Ever hunting for ways to raise rents, landlords are pushing once again for legislation to automatically pass some property tax costs onto tenants.

The landlord proposal–if successful--would virtually negate the savings which tenants netted when Proposition H passed in 1992.

What the Landlords Want

Landlords want money, in a nutshell. And they want to get it in the easiest way possible. Ideally, they'd like to be able to just raise rents at whim, but rent control generally prohibits that. Most rent increases, in fact, they have to petition the Rent Board for and the tenants get to argue why the landlord does not deserve the rent increase.

Rent control in San Francisco allows landlords to obtain rent increases of nearly 20% if the landlord takes advantage of all the ways he can raise rents and convince the rent board his expenses justify such an increase.

20 percent is a pretty hefty rent increase and people might think they'd be satisfied with that. But they're not, largely because most of that increase musty be petitioned for and the landlords must be able to demonstrate that their income, expenses and repair work justifies the rent increase. Only the annual automatic increase (which is currently 1.3%) can be imposed on tenants without any documentation or evidence that the rent increase is justified.

That poses a problem for landlords: it's one thing to cry poor to your tenants and say you need a rent increase; it's quite another to have to document this poverty before the rent board.

For years, landlords have been trying chip away more rent increases they can get automatically. Since 1992's Proposition H cut the automatic rent increase from 4% to 1.3%, they've been stepping up this pursuit.

What they've zeroed in on are property tax increases resulting from revenue bonds passed by the voters. In 1992, when landlord polls showed Proposition H winning, they tried to cut a deal to pass Proposition H through the Board of Supervisors in exchange for automatic bond passthroughs. That deal was rejected by tenants and Proposition H won, but the landlords have been harping on this issue ever since.

Until recently, the property tax passthrough issue has been boiling under the surface, but now landlords have come forth with legislation (in the form of Rent Board Rules changes) to acquire the right to pass on increased property taxes automatically, regardless of whether or not their expenses actually justify the rent increase.

The landlords have put forth a couple of proposed changes, all based on amending the section of the rent law which enables landlords to get "operating and maintenance" (O & M) rent increases. O & M rent increases enable landlords to hike rents by up to 7% a year, providing they can show their building expenses (such as taxes, water, sewer, and mortgages) have increased over the past two years.

These O & M passthroughs would enable landlords to pass on the tax increases resulting from bonds, but landlords have a big problem with this mechanism: all the building expenses are "aggregated." This means, for example, if the bonds caused taxes to increase by $10 and the landlord refinanced his mortgage and saved $15, then his expenses actually went down $5. Landlords want to be able to exclude any expenses which have actually gone down and simply get a passthrough on the expenses which increased.

The most radical landlord proposal is an all-out attack on the O & M rent passthrough and "disaggregates" all the components, meaning landlords could get a rent increase on any single expense which increases, regardless of whether or not other expenses have decreased. Thus, for example, if all their expenses decreased by $50 but sewer charges went up by $5, they'd get a $5 rent increase (and $55 extra profit).

The less radical version seeks to disaggregate just the property tax increases resulting from bonds, thus meaning each bond would result in an automatic rent increase for tenants, regardless of how much other expenses went down.

The rent increase would vary per building because as a property tax value it would be dependent on the assessed value of the property. The assessed value changes when the property title transfers (to a new owner, for example) and, generally, tenants in a recently sold building would pay the highest rent increases and tenants in buildings which haven't sold since the pre-Proposition 13 era would pay lower increase. On the whole, the per tenant rent increases would probably be in the 1-3% range.

The O & M provision in the law interestingly enough doesn't include any provision for tenants to get a rent decrease if the landlords total expenses go down.

The Bond Issue

Revenue bonds have become a major source of funding for cities in the post-Proposition 13 era. Of the expenses generally included in the operating and maintenance categories, taxes and mortgages are the two heavyweights. In recent years, mortgage interest rates have been declining significantly and landlords who've refinanced have been actually been able to decrease their ongoing operating & maintenance costs due to this. At the same time, though, revenue bonds have added small increases to property taxes and cutting into their potentially higher profits. This has not sat well with the greedy landlords and thus they've targeted ways to pass the bond increases on to tenants.

As is often the case, landlords are embarrassed to simply come out and say they want more money and profit. Instead, they've tried to put forth an argument that landlords are unduly burdened by revenue bonds and that tenants benefit from these bonds but don't have to pay.

Landlords want tenants to pay taxes on their equity, but don't want tenants to have any equity in the property.

This attitude doesn't sit real well with many tenants who are still smarting over all the Proposition 13 tax benefits landlords got (which never trickled down) and read every April about all the tax benefits associated with owning property and then saw the California legislature take away a minimal renters tax credit. Most tenants, in fact, feel that its the owners of investment real estate who are taking away from the community without giving to it.

Property Taxes and Communities

Putting aside the larger issues of whose most favored when it comes to taxes–property owners or tenants–the fact is that property taxes provide the bulk of funding for a municipality. And since Proposition 13, about the only way to increase this type of revenue os through revenue bonds. Is it fair that funding for schools and libraries should stem from property taxes when everyone benefits?

On the face of it, it might seem unfair. There are many inequities in our overall tax system and there are some serious problems with a reliance on property taxes. But, the generic problems with property taxes are not so much that they unfairly place a burden on group of people as much as that taxes based on real estate values means that richer cities can have more services. Poorer communities get fewer services. But that's all an issue of developing a fairer, equitable and more progressive taxation system. Merely transferring the property tax costs from landlords to tenants does nothing to address any systematic problems in our tax structure.

Given that the local tax structure relies on property taxes, it's important to understand why property taxes should be paid for by the property owners and not by the tenants. Because whether tenants or property owners pay for these tax increases is what's at the crux of this issue.

Owning property is a financial investment. Property is invested in because over time it increases in value, A property investment is not too much different from any other investment, be it stocks or corn futures, and as such it produces a source of revenue for the investor.

Any source of revenue os typically taxed, including income as well as investments. A property tax is merely an assessment on the landlord's growing equity, or value, of their property.

Property taxes are paid for by land owners because they are the ones profiting from their investment: they are getting the equity and value of the property they own. In other word, a property owner has an asset which is valuable and taxable.

The property tax is not meant to be an assessment on all "residents" for example. A sales tax or an income tax is closer to that concept than is the property tax. When landlords argue that property tax increases should be shared by all San Franciscans, they are arguing that property taxes are a tax on all residents of the city.

But that's not the case. As stated above, property taxes are on the investment of the landlord and on the equity the landlord holds in the property. To share this tax with tenants would be blatantly unfair unless and until tenancy agreements also included provisions for landlords to begin sharing part of the equity in the building in exchange for the rent.

That doesn't happen, though, even though most tenants have paid significant shares of the landlord's mortgage.

Any type of property tax passthrough, therefore, taxes the tenant on an investment they do not own and can not benefit from.

The Need For Revenue Sources

Unarguably, cities need additional revenue. Proposition 13 and the federal cuts imposed by Bush and Reagan have devastated most California cities. Libraries and schools are in serious trouble, as are the basics like streets and sewers. Innovative ideas to tackle serious social problems are generally dismissed for lack of money.

The need for local revenue has been addressed solely through revenue bonds, however, as these form a sort of loophole around Proposition 13. But are these bonds the fairest way to raise money? Bonds and property taxes probably have their place within a revenue structure, but the reliance on bonds (as is happening) can overly-burden some residents.

This is not so problematic with commercial or residential landlords who own the property as an investment and income source and should therefore expect to be taxed on it. But it is a problem for homeowners, who own their homes to live in them--not necessarily to make money off them. The landlords' proposal to pass bond costs on to tenants does nothing to address this issue. In fact, it relieves the investment property owners from their obligations while not providing any relief for homeowners.

There are alternatives to bond revenue. These alternatives are what should be on the table when it comes to increased revenue--not ways to get tenants to pay their landlords taxes.

Some of the common revenue ideas which have been thrown out steadily (and dismissed) in the last few years include:

•Business Tax–This proposal calls for a higher local payroll tax on big business and a lower tax on small business. Analysts estimate the combined proposals would net an increase in revenue of $17 million.

•Hotel Tax–Raising the Hotel Tax to the same rate as in Los Angeles would net $10.7 million.

•Real Estate Transfer Tax–Increasing the tax on sold real estate to the same rate it is in Oakland and other Bay Area Cities would net at least $7 million. This tax has a double benefit of being anti-speculative, since it penalizes the quick speculative sales of housing.

•Stock Exchange Transfer Tax–$27.9 million could be raised by placing a .1% tax on stocks sold on the floor of the Pacific Stock Exchange.

•Excess Income Tax–A 1% license fee on individual incomes of over $100,000 would raise at least $4 million.

•PG & E Franchise Fee–Changing the "franchise fee" charged to PG & E from .5% to 2% would raise nearly $8 million.

•Downtown Transit Assessment District–Downtown businesses are the major beneficiaries of MUNI, relying on transit to the Financial District to get employees to and from work. A Downtown Transit Assessment District would raise $54 million.

All together, these proposals bring in over $125 million a year. Plus these are all progressive taxes, which place a fair burden on people who can pay, rather than building in loopholes and exemptions for the rich.

It's these taxes which San Francisco should look at, not shifting the tax burden from landlords to tenants.

By Ted Gullicksen